IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APEAL FROM ORDER NO.202 OF 2006
WITH
CIVIL APPLICATION NO.278 OF 2006

Ramchandra Raosaheb Somwanshi. ..Appellant.

V/s.

Kamlesh Kantilal Oswal & Ors. ..Respondents.

Ms.Subhangi Borade for Ms.Seema Sarnaik for appellant.

Mr.Rajesh S.Datar for respondent No.1.

Ms.Gauri Godse, for respondent No.2.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 6, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant documents.

2. I see no reason to depart from the conclusion reached by the Court below for dismissing the Notice of Motion taken out by the Plaintiff. The Court below has found as of fact that the plaintiff has availed of the consideration amount and is taking advantage of his own wrong. The argument of the plaintiff that the Court below has not dealt with the discrepancy occurring in the two agreements regarding the area and consideration, to my mind, is incorrect. The court below has considered that aspect and has

found that the subsequent Sale Deed executed between the parties clearly deals with the situation as to the reason for reduction in the area of land to be sold in favour of the respondent No.1. The reason therefor is recorded in the document itself. The document has been executed by the Power of Attorney of the Plaintiff. At the relevant time the Power of Attorney was subsisting. The fact that the plaintiff has cancelled the Power of Attorney given in favour of the respondent No.2 subsequently will be of no avail. There is no basis to doubt the correctness of the agreement, which is put in issue. For the present, suffice it to observe that the view taken by the court below on the issue of prima facie case is a possible view. Hence, no case for interference is made out.

3. The argument of the appellant that the Power of Attorney authorises the respondent No.2 only to deal with the land admeasuring 2840 sq.mtrs and as such the sale deed executed by respondent No.2 in favour of respondent No.1 for an excess area of 240 sq.mtrs was without authority. Even this aspect has been considered by the trial Court in paragraph-6 of the impugned Judgment, which is a possible view. Thus, no fault can be found with the conclusion

reached by the court below at this interlocutory stage. Hence, no interference is warranted.

4. Appeal as well as civil application are dismissed.